

FINANCIAL INSTITUTIONS COMMITTEE MEETING
Business Law Section, State Bar of California

Meeting of November 8, 2005

Committee Members Present: John Hancock, Chair; Rosie Oda, Secretary; Michael Abraham; Bruce Belton; Laura Dorman; Bart Dzivi; Andrew Druch; Jim Dyer; Bart Dzivi; Mark Gillett; Jay Gould; Robert Hale; Linda Iannone; Randy Kennon; Kenneth Krown; Teryl Murabayashi; Todd Okun; and Keith Ungles.

Committee Members Absent: Meg Troughton, Vice Chair; Leland Chan; Rosemary Lemmis; Allan Ono; Brad Seiling; Robert Stumpf; Russ Schraeder; and Richard Zahm

Advisory Members and Others Present: Clay Coon; Ted Kitada; Bob Mulford; Michael Occhiolini; Maureen Padden; Jim Rockett; Neil Rubenstein; Maureen Young; Jenefer Duane and Candice Greenberg.

Call to Order: John Hancock called the meeting to order at 9:35 AM.

Welcome to Members and Advisory Members: John welcomed the Committee Members and the Advisory Members. He asked each person to identify themselves and where they worked and introduced guests Candice Greenberg and (later) Jenefer Duane of the Elder Financial Protection Network ("EFPN").

1. Approval of October 11, 2005 Minutes: The Committee approved the minutes of the October 11, 2005 meeting.

2. Proposed Jury Trial Waiver (*Grafton*) Legislation: Neil Rubenstein of Buchalter presented a status report from our Jury Trial Waiver Subcommittee, the other members of which are Meg Troughton, BofA, our Vice Chair, Joe Catalano, UBOC, and Isabelle Ord, Shepherd Mullin. The Subcommittee has been working with the Corporations Committee on a proposal to present to the Executive Committee, and have come up with a proposal to amend Cal. Civ. Proc. Code section 631. Neil presented the draft and explained that there was some discussion between the Corporation Committee and our Subcommittee as to whether the legislation should cover consumer as well as commercial jury trial waivers. Michael Occhiolini of Wilson Sonsini, Corporations Committee Liaison, reported that Neil's recommendation had also been adopted by his Committee. Ted Kitada of Wells said that he had heard that the California Bankers Association ("CBA") was evaluating the same issue and may have decided to cover both. John Hancock of World, our Chair, pointed out that our views did not have to conform to the CBA's and called for a vote, with the Subcommittee to confirm what CBA's position was and report to the Committee. Specifically, the amendment of section 361 would allow a party to waive trial by jury

By entering into a written contract agreement, undertaking or commitment in which the parties thereto have waived their right to a jury trial, other

than a contract, agreement, undertaking or commitment in which one or more of the parties is a consumer. As used in this clause, “consumer” means an individual who is entering into the contract, agreement, undertaking or commitment primarily for personal, family or household purposes.

Despite the divergence of views expressed, nearly all members voted to approve joint support of the proposed legislation with the Corporations Committee with two abstentions from inhouse bank counsel who wanted to first confirm that their employers would not object.

3. EFPN Conference on Elder Financial Abuse Law, scheduled for March 16, 2006 in Los Angeles: Jenefer Duane and Candice Greenberg of the EFPN asked our Committee to co-sponsor the conference they have scheduled for next March. Ms. Duane has received a commitment from Attorney General Bill Lockyer to be the Keynote Speaker, and would offer MCLE credit to attendees, including ethics credit. She was previously a presenter at one of the Committee’s traveling roadshows on the subject of elder abuse before the legislation was enacted when Ted Kitada was Chair. There would be a charge of approximately \$150 for each attendee, and funds would be distributed to various senior support groups, including the Senior Legal Hotline and EFPN.

After their presentation of their request, John let them know that we would take their request under advisement but that it was unlikely that we could provide financial support due to our budgetary constraints. He promised to get back to them after the Committee had the opportunity to discuss the issue, and then our guests departed. Rosie Oda of Pillsbury indicated some concern with the appearance of endorsing a single vendor for elder abuse training. Jim Rockett of Bingham McCutcheon recommended that we support this group because it was better for banks to get ahead of this issue and to be seen as sharing the overall objectives of such a group.

After much discussion, our Chair called for the formation of a Subcommittee on Open Meetings to look into whether it would be possible to obtain an auditorium at Wells and to conduct an open meeting of our own on this issue as well as whether to support EFPN’s conference. Teryl Murabayashi of UBOC, Ted Kitada, Laura Dorman of Citi and Rosie Oda volunteered. Jim Rockett also recommended that the Subcommittee consider whether to send members into retirement communities to do some training. Maureen Young of Bingham McCutcheon suggested that we check with CBA as to their views of our support of this group. Our Chair then called for a vote as to whether to support this group subject to the Subcommittee checking with Maurine Padden and Leland Chan as to the position of the CBA. A majority voted in favor of the motion.

4. Deposit Insurance Reform: Maureen Young of Bingham McCutcheon reported on pending Deposit Insurance Legislation. There is no conference bill as yet. The Financial Services Roundtable likes the House version because it favors big banks. The coverage level is increased from \$100,000 to \$130,000, and adjusts the coverage level for inflation, whereas the Senate bill will keep the coverage level at \$100,000. Maureen reported that

Sen. Shelby has opposed raising coverage levels. Bart Dzivi, our Federal Legislation reporter, explained that some view the last increase from \$40,000 to \$100,000 as one of the underlying causes of the S&L debacle. Bart also reported that small banks are in favor of expansion of coverage, but that there are only 15 days left in the legislative calendar, and so it was unlikely that this would pass unless the entire deficit reduction package passes.

5. Theme Edition, Business Law News: Our Chair, John Hancock, asked whether there was interest in publish a theme edition. Maureen suggested doing it jointly with the Consumer Financial Services Committee, but Ted asked whether that Committee still exists. Maureen and Rob Hale of Wamu/Providian agreed to serve on a Subcommittee to explore this and to contact the BLN editor, Nina Yablok. There is no printing deadline.

6. State Legislative Report: Bob Mulford reported that the State Legislature was not in session, and so he had nothing to report. Instead, he urged us all to get out and vote.

7. Federal Legislative Report: Bart Dzivi reported that the GSE legislation had been adopted by the House that would create a new agency to replace the Office of Federal Housing Enterprise (regulator of Fannie Mae and Freddie Mac) and the Federal Housing Finance Board (regulator of the Federal Home Loan Banks). This legislation would also establish an affordable housing fund, and use some funds collected from Fannie and Freddie to pay off part of the interest on the remaining Refcorp bonds. The White House opposes this bill without an express limit on mortgage holdings. Chairman Oxley of the House Financial Services Committee is retiring, and Richard Baker, who is the leading contender to replace him, is the author of this legislation. Bart predicted that next year, privacy will be the biggest issue on the Hill.

8. Miscellaneous: Maureen Young reported that new Bank Secrecy Act Regulations had been released covering insurance companies.

9. Adjournment: The meeting was adjourned at 11:20 AM.

10. ADDENDUM: On November 9, 2005, John Hancock, our Chair, called a conference call meeting of the Subcommittee on Open Meetings to determine whether to proceed with sponsorship of the EFPN meeting next March. Present were Teryl Murabayashi, Ted Kitada, Laura Dorman and Rosie Oda. Ted had previously reported that he had secured the Wells auditorium for May 9, 2006 for the Committee's open meeting.

Rosie reported what CBA's General Counsel Leland Chan, also a member of the Committee, and representative Kevin Gould had to say about co-sponsorship of the EFPN meeting. The CBA has had some unfortunate experiences with EFPN over their co-sponsorship of an earlier program, as a result of which CBA has prepared its own elder abuse training materials and scheduled its own training conferences for bankers. Two are currently planned for February next year, for which CBA, like EFPN, will charge for attendance. As an alternative to co-sponsoring the EFPN conference in

March, CBA requested that the Committee co-sponsor its conferences. The Subcommittee agreed that it would be duplicative to try to sponsor a separate “bankers’ track” at the EFPN event for bankers and bank lawyers. John said he would also discuss this with Jim Rockett before contacting EFPN.

Ted, who is also on CBA’s task force for its elder abuse conferences, and was Chair when the Committee offered an outreach program to seniors in the Bay Area, offered to ask CBA what type of assistance we could provide and to report how much CBA is planning to charge since John had reservations about co-sponsorship of CBA’s conferences if the fee is going to be too high. The Subcommittee agreed that there were too many programs available on this subject to offer our own program.

John asked the Subcommittee to explore whether the Committee could provide some community outreach on the elder abuse legislation instead, for example, at Rossmoor in Walnut Creek where the Committee had previously put on a program that over 200 seniors attended under Ted’s leadership. We agreed, and Ted said he would look into that. Teryl said that she would check what senior conferences are scheduled for Southern California to see if that would be a good venue. We also discussed some possible alternative subjects like Privacy and Identity Theft for either those community outreach programs or for the Open Meeting. Ted Kitada had already reserved the Wells Fargo penthouse for the previously-proposed elder abuse Open Meeting, and we asked him to retain the reservation while we discuss alternative subjects.